

# Understanding Insurance Language in Contracts

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Members enter into a variety of contractual agreements ranging from service provider agreements to construction contracts. Independent contractors, vendors and other providers of products or services (contractors) on behalf of the member may expose the member to liability.

A review of contractual agreements is an integral step in the risk management process. Understanding the potential risks and effectively transferring those risks should be an important part of each member's risk management procedures.

A key risk management practice is to require contractors to have sufficient insurance to cover losses.

## Getting Off to the Right Start

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Ensuring that the contractor has adequate coverage should begin long before the work does. When issuing a request for proposal (RFP), members should always identify the insurance coverage and limits required. This puts contractors on notice and allows them to include the cost of insurance in their proposals. Upon selection of the contractor, it is a simple task to transfer the insurance requirements used in the RFP to the contract.

If jobs or contracts do not require obtaining competitive bids, Members should include their insurance requirements in the contracts. MCIT also recommends reviewing insurance requirements when renewing contracts to be certain they include current minimum requirements.

## Determining Insurance Requirements

The resource "Checklist of Coverage(s) and Liability Limits for Independent Contractors" outlines MCIT's recommendations. However, the types of coverage and amount of insurance required should be determined by each member on a case-by-case basis dependent upon various factors, such as the scope of work and the potential risk involved.

It is equally important to recognize that exceptions may be needed in individual situations. MCIT recommends that members establish a policy or procedure that allows for consideration and/or prior approval of a particular exception. Exceptions may result in the unintended assumption of risk that is not covered by MCIT.

Factors to consider include:

- Size and scope of the project
- Risks posed by the project
- Lines of coverage needed (e.g., general liability, auto liability, professional liability, workers' compensation)

Members should keep in mind that the size of the project is not indicative of the amount of risk involved.

**Example:** The member calls an electrician to repair an electrical outlet. The cost of the repair is less than \$100. The electrician makes an error that causes an electrical short, resulting in significant damage. The cost of the contracted services does not reflect the potential risk.

# Understanding Types of Insurance Coverage

To determine the appropriate insurance requirements for independent contractors, vendors or service providers, it is important to have at least a basic understanding of the general types of insurance coverage.

The most commonly applicable coverages include:

- Commercial general liability
- Automobile liability
- Workers' compensation
- Employer's liability
- Cyber-liability
- Professional liability

## Commercial General Liability

This is a policy that provides coverage for third-party negligence-based civil liability claims (i.e., payment is not typically made to the insured, but rather to someone suffering loss who is not a party to the insurance contract). Damages include bodily injury, property damage, and often can include personal and advertising injury.

When a claim is made, the insurance carrier has the duty (and the right) to defend the insured. The legal costs of a defense normally do not affect policy limits unless the policy expressly states otherwise.

Commercial general liability typically provides coverage for claims arising from the following.

<b>Bodily injury and property damage liability</b>	Physical injury to a third party or damage to property owned by a third party resulting from the ownership, use and/or maintenance of the insured's premises or arising out of the insured's operations
<b>Product liability</b>	Bodily injury or property damage because of some defect in the product sold or manufactured
<b>Completed operations</b>	Bodily injury or property damage resulting from work of the insured that has been completed as called for in a contract or work that has been put to its intended use
<b>Fire damage to rented premises</b>	Coverage provided for the insured's liability for fire damage to premises rented to the insured
<b>Medical expense (any one person)</b>	Coverage that reimburses others, without regard to the insured's liability, for medical expenses incurred by the other party as a result of an accident (typically a slip or fall) on the insured's premises
<b>Personal injury</b>	Includes specific offenses that produce harm (other than bodily injury) that typically include slander; libel; false arrest, detention or imprisonment; wrongful eviction; malicious prosecution; and invasion of privacy.
<b>Advertising injury</b>	Includes offenses in connection with the insured's advertising of its goods or services, such as libel, slander, invasion of privacy, copyright infringement and misappropriation of advertising ideas.

## Automobile Liability

This provides coverage when an insured is legally liable for bodily injury or property damage caused by an automobile. The business auto policy covers the judgment awarded (up to the limits of the policy) including the court costs and legal defense fees.

Minnesota law requires that the owner of the vehicle maintain auto liability coverage, personal injury protection (no-fault coverage) and uninsured/underinsured motorist coverage or provide evidence of financial responsibility.

Under the business auto policy, the contractor may select auto liability coverage as follows.

<b>Any auto</b>	Provides the most comprehensive coverage by encompassing all owned, nonowned and hired autos.
<b>Owned autos</b>	Extends coverage to vehicle(s) registered to the insured.
<b>Nonowned autos</b>	Provides auto liability coverage for claims associated with auto accidents from vehicles that are not owned by the insured but are being used on the insured's behalf. Typically, nonowned autos are owned by employees but are used for the insured's benefit.
<b>Hired autos</b>	Provides auto liability coverage for vehicles temporarily rented to the insured.

## Workers' Compensation

This coverage provides wage replacement and medical benefits for employees injured in the course and scope of employment subject to the limitations in the Minnesota Workers' Compensation Act (Minn. Stat. Ch. 176). To comply with the Workers' Compensation Act, employers must purchase workers' compensation insurance or may self-insure with appropriate proof of financial responsibility.

Employers as defined in the statute, are those that hire another person to perform services. "Employee" is generally defined as an individual performing service for another for hire. This may include full-time, part-time and seasonal or occasional workers.

Minnesota Statutes, Section 176.041 lists exceptions to mandatory coverage. If an exception is not stated in statute, the employer must provide workers' compensation insurance.

## Employer's Liability

This provides coverage for claims for work-related accidents, injuries or illnesses not addressed by the Minnesota Workers' Compensation Act. The employee, his or her family members, relatives or third parties, may make claims.

Employer's liability should not be confused with employment practices liability, public employees liability or employee benefits liability coverages. These typically provide coverage for claims arising from allegations such as sexual harassment, discrimination, wrongful termination, and errors and omissions in the administration of employee benefit plans.

## Excess and Umbrella Liability

This coverage provides limits in excess of the underlying liability policy. They are typically written over primary liability policies, such as business auto, commercial general liability and employer's liability coverage.

An excess liability policy is no broader than the underlying policy; its sole purpose is to provide additional coverage limits.

An umbrella liability policy serves three purposes:

1. It provides excess limits when the limits of the underlying policies have been exhausted by payment of claims.

2. It drops down and picks up where the underlying policy leaves off when the aggregate limit of the underlying policy in question is exhausted.
3. It may provide protection against some claims not covered by underlying policies.

## Professional Liability

Professional liability covers errors and omissions or unintentional wrongful acts by covered parties in the performance of the contractor's professional duties. Also known as errors and omissions coverage, this coverage may include legal defense costs and any resulting judgments up to the limits of the policy.

Members may enter into contracts for the delivery of various professional services or products that can cause claims without causing bodily injury, property damage, personal injury or advertising injury. Typically, a commercial general liability insurance policy only responds to claims for bodily injury, property damage, personal injury or advertising injury (as defined previously).

**Example:** The failure of an engineer's design to perform properly may not cause physical damage to property or equipment, or cause bodily injury/physical injury. Therefore, the general liability coverage would not apply. The member may, however, incur financial losses, such as from redesign costs, lost employee productivity or extra expenses in restoring infrastructure, or may face a claim from a third party who has been affected by the failure. Professional liability coverage fills this need.

If the contractor is a medical professional, consultant, technology professional (website developer, technology consultant, software developer, etc.), architect, engineer, attorney or other consultant, members should consider requiring professional liability coverage.

Members should also consider requiring professional liability coverage of anyone who provides advice or delivers a service.

## Cyber-liability

Cyber-liability policies cover first- and third-party losses related to data records under vendor control arising from computer breaches, hacking, propagation of viruses and malware, cyber-extortion, ransomware and social engineering. The coverage may include legal defense costs and any resulting judgments up to the limits of the policy.

As with professional liability, members may enter into contracts for the delivery of various services or products that can cause claims without causing bodily injury, property damage, personal injury or advertising injury. Typically, commercial general liability insurance only responds to claims of those types.

**Example:** The failure of a network system due to hacking or malware may not cause physical damage to property or equipment, nor cause bodily injury/physical injury. Therefore, it would not pertain to the general liability coverage. The member may, however, incur financial losses, such as lost data, lost employee productivity or extra expenses in restoring programs, or may face a claim from a third party who has been affected by the interruption. Cyber-liability coverage fills this need.

If the contractor is a medical professional, attorney or other consultant or contractor creating, accessing, storing, manipulating or otherwise handling data of any kind, members should consider requiring cyber-liability coverage.

Professional liability policies often exclude cyber-related claims. Cyber-liability coverage often excludes errors or omissions claims.

## Cyber-liability/Professional Liability

Cyber-liability/professional liability combination policies have elements of both rolled into one coverage. Technology vendors, such as website developers, information technology consultants, software developers and data hosts, providing

professional services need this hybrid insurance. A policy of this nature addressing both types of exposure is acceptable in lieu of separate policies.

## Understanding Liability Limits

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### Minnesota Statutes, Section 466.04: Maximum Liability

MCIT recommends (not to be confused with requires or mandates) that members use the tort caps as a benchmark when determining adequate limits of liability for its contractors. The maximum tort liability damages are \$500,000 per claimant and \$1.5 million per occurrence.

### Reasons Contractors' Insurance Limits Should Match Tort Caps

Tort caps do not limit a contractor's exposure. Good reasons exist to use these limits as a starting point when deciding which limits to require of contractors.

Having a contractor's occurrence limit mirror the statutory cap more likely ensures:

- That the contractor's coverage will be adequate to cover a claim. Absent having sufficient coverage limits, an aggrieved party may seek additional compensation from the member.
- MCIT can pursue recovery against the contractor's carrier in cases where the member is named as the sole defendant even though the contractor has the majority of the negligence. Therefore, it is important that the amount available at a minimum matches the member's potential exposure.

## Understanding Terminology

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### Insurance Limits

The limit of liability is the maximum amount an insurance company agrees to pay in the case of loss. Each individual type of coverage (general liability, auto liability, excess liability, etc.) express coverage limits using distinctly different terminology.

To make understanding terminology even more complicated, the coverage limits offered by the standard insurance industry do not directly correspond with the statutory caps on damages under Minnesota Statutes, Chapter 466.

### Commercial General Liability

Liability limits under a commercial general liability policy differ significantly from the member's coverage limits. It is imperative that the member develop an understanding of those differences to ensure that the contractor's coverage meets or exceeds the minimum requirements in the RFP or contract.

Commercial general liability policies provide separate limits of coverage for general liability, fire damage to rented premises, products and completed operations liability, personal and advertising injury liability, and medical payments. For purposes of this discussion, MCIT only addresses the limits of coverage that cause the most concern for members, namely, the occurrence limits and aggregate limits.

#### Occurrence limit

- "Occurrence" means an accident including continuous or repeated exposure to the same general harmful conditions.
- The occurrence limit is the maximum amount an insurance company agrees to pay in the case of loss for bodily injury or property damage caused by any one occurrence (or accident).

<b>General aggregate limit</b>	<ul style="list-style-type: none"> <li>• An aggregate limit is the most that will be paid for all covered losses sustained during that policy period.</li> <li>• All claims in that policy period erode or reduce the remaining aggregate limit.</li> <li>• The contractor’s minimum general aggregate limit is typically twice the occurrence limit.</li> <li>• Consideration might be given to requiring the aggregate limit to apply per project or per location.</li> </ul> <p>Note: The member’s MCIT liability coverage does not have an aggregate limit.</p>
<b>Products/completed operations aggregate</b>	The most that will be paid for all covered losses in that policy period arising from product liability or completed operations liability claims.

### Examples of Variation in Liability Limits

- Minnesota Statutes, Chapter 466 caps tort liability damages at \$500,000 per claimant. The independent contractor’s standard commercial general liability policy typically does not include a per claimant limit.
- MCIT recommends, at a minimum, that the contractor’s coverage should reflect an *occurrence* limit that mirrors the amount for which the member may be held liable for tort liability, which is \$1.5 million.
- The contractor’s *aggregate* limit typically reflects the insurance industry standard rule, which is the aggregate limit is two times the occurrence limit. It is important to keep in mind that the *aggregate* limit is the most that will be paid under that policy for the entire policy term. It should not be confused with the occurrence limit.

When comparing the liability limits of MCIT coverage with the minimum recommended liability limits for independent contractors, the differences are clear, as illustrated below.

MCIT Member’s Liability Limits		Independent Contractor’s Liability Limits	
<b>Bodily Injury and Property Damage</b>		Each Occurrence	\$1,500,000
Per Claimant Limit	\$ 500,000	Fire Damage to Rented Premises (Each Occurrence)	\$
Per Occurrence Limit	\$1,500,000	Medical Expense (Any One Person)	\$
<b>Personal Injury and Advertising Injury</b>		Personal and Advertising Injury	\$
Per Claimant Limit	\$ 500,000	General Aggregate	\$3,000,000
Per Occurrence Limit	\$1,500,000	Products-Comp Ops Aggregate	\$3,000,000
<b>Fire Damage</b>			
Limit, Per Fire	\$ 100,000		
<b>Medical Expense</b>			
Any One Person	\$ 2,500		

### Commercial General Liability Recommended Minimum Limits of Liability for Contractors

**Option 1:** To establish insurance requirements for independent contractors, vendors and service providers that most closely follow the member’s limits (and the caps on damages provided by Minn. Stat. Ch. 466), the requirements will read:

- \$1.5 million each occurrence
- \$3 million general aggregate

**Option 2:** Members likely find that insurance companies usually do not offer insurance limits in increments of \$500,000. Most often, limits are offered in increments of \$1 million. To avoid objections from independent contractors, sometimes members will increase the minimum requirement to the next typically available coverage increment, which is:

- \$2 million each occurrence
- \$4 million general aggregate

**Option 3:** With either of the two minimum coverage requirements, the member may find it helpful to allow the contractor the option of meeting the required coverage limits by purchasing a combination of primary and excess limits. This is typically accomplished by including a statement in the member’s insurance requirements, such as “Excess/umbrella liability coverage may be used to reach the total recommended limits.”

This will allow the contractor the most flexibility in obtaining the appropriate limits. This option is illustrated in conjunction with auto liability limits on the following page.

## Auto Liability Coverage

Automobile liability limits are typically written as either a combined single limit or as split limits.

<b>Combined single limit</b>	The most that will be paid as a result of any one covered accident for bodily injury and property damage combined. A combined single limit is most commonly applicable to business or commercial auto liability limits.
<b>Split limits</b>	Personal auto policies are typically written with policy limits in a format known as split limits. The limits incorporate a maximum amount payable for bodily injury liability sustained by one person, and a maximum for all bodily injury liability regardless of the number of people injured (bodily injury per occurrence); and a limit for property damage as a result of the accident. Because a split limit is not typically applicable to business/commercial auto policies, MCIT does not provide a recommendation for split limits.

### Commercial Auto Liability Recommended Minimum Limits for Independent Contractors:

**Option 1:** Limit requirements that most closely mirror the member’s limits are \$1.5 million combined single limit (per accident).

**Option 2:** It is not likely that a primary limit of more than \$1 million will be available. Allowing the contractor the option of meeting the member’s minimum requirement by purchasing a combination of primary and excess limits is crucial. This may be done by including a statement such as, “Excess/umbrella liability coverage may be used to reach the total required minimum limit of \$1.5 million.”

## Workers’ Compensation and Employer’s Liability Coverage

If the contractor has employees, workers’ compensation coverage is mandatory, and workers’ compensation coverage should be required in the member’s insurance specifications or contract.

Recommended minimum limits do not apply to workers’ compensation coverage. The question is only whether coverage is or is not required according to the statute.

The workers’ compensation section of the certificate of insurance includes two boxes located above the liability limits; one of which should be checked. The certificate of insurance should confirm that the contractor’s workers’ compensation coverage complies with statutory limits by checking the first box.

If not, the second box (“Other”) will be checked, and coverage should be explained in the Description of Operations section.

If the contractor is a sole proprietor, the member should pay special attention to the right column of the Workers’ Compensation section of the certificate, which asks, “Any proprietor/partner/executive officer excluded? If yes, describe under Special Provisions below.”

If the contractor has rejected workers’ compensation coverage, a written statement in the Description of Operations section of the certificate should confirm this.

### Employer’s Liability Recommended Minimum Limits for Independent Contractors

MCIT recommends employer’s liability coverage with the following as minimum limits:

- Bodily injury by accident: \$500,000 each accident
- Bodily injury by disease: \$500,000 each employee
- Bodily injury by disease: \$500,000 policy limit

### Excess/Umbrella Liability Coverage

Members’ insurance requirements often state “Excess/umbrella liability coverage may be used to reach the total recommended limits.” This allows the contractor the most flexibility in obtaining the appropriate limits.

If the contractor uses an excess/umbrella policy to meet the member’s insurance requirements, the most likely liability limit scenario is as follows.

#### Commercial General Liability

Each Occurrence	\$1,000,000
Damage To Rented Premises (Each Occurrence)	\$
Med Exp (One Person)	\$
General Aggregate	\$2,000,000
Prod – Comp Op Aggregate	\$2,000,000

#### Auto Liability

Combined Single Limit (Per Accident)	\$1,000,000
Bodily Injury (Per Person)	\$
Bodily Injury (Per Accident)	\$
Property Damage (Per Accident)	\$

#### Excess/Umbrella Liability

Each Occurrence	\$1,000,000
Aggregate	\$2,000,000

### Professional Liability Coverage

Members should require professional liability insurance of contractors that perform professional or semiprofessional services. Some examples of professionals who should obtain this type of coverage include, but are not limited to, individuals who perform medical professional services (psychologists, emergency medical technicians and paramedics), architects, engineers, attorneys and consultants.

### Professional Liability Recommended Minimum Limits

Recommended minimum liability limits are:

- \$2 million per wrongful act or occurrence
- \$4 million annual aggregate



A limit of \$2 million per occurrence is recommended. It is unlikely that coverage will be available in increments of less than \$1 million, and typically excess/umbrella coverage will not apply in excess of professional liability coverage.

If the contractor has purchased professional liability, it is usually shown on the certificate under the Other section.

### Cyber-liability Recommended Minimum Limits

Recommended minimum liability limits are \$2 million per occurrence and \$4 million annual aggregate.

MCIT recommends a limit of \$2 million per occurrence. Again, it is unlikely that coverage will be available in increments of less than \$1 million, and normally, excess/umbrella coverage will not apply in excess of cyber-liability coverage.

If the consultant has purchased cyber-liability, it is typically shown on the certificate in the Other section.

### Cyber-liability/Professional Liability Recommended Minimum Limits

Recommended minimum liability limits are \$3 million per occurrence and \$6 million annual aggregate.

MCIT recommends a limit of \$3 million per occurrence. Coverage is probably not available in increments of less than \$1 million, and typically, excess/umbrella coverage will not apply in excess of this hybrid coverage. If the consultant has purchased cyber-liability/professional liability, it is typically shown on the certificate in the Other section.

## Additional Considerations

Recommendation	Why Is This Important?
Insurance the contractor carries should be primary, not excess, to any coverage the member carries.	If a claim is brought against the member and the contractor, the contractor’s insurance should respond first, not the member’s coverage. Therefore, the contractor’s insurance must be primary, not excess.
The contractor’s insurance carrier must be acceptable to the member. For example, member’s insurance requirements may state, “Insurance shall be placed with insurers with a current A.M. Best rating of no less than A: VII. If the contractor is self-insured, review of financial information may be required.”	<p>In the event a claim is brought arising from the contractor’s actions, the contractor’s insurance carrier must be financially solvent enough to have the resources to defend and pay the claim.</p> <p>MCIT recommends including this language in the member’s insurance requirements to ensure that the member has the option of verifying that the contractor’s insurance carrier is financially stable.</p>
<p>Coverage must be in force for the complete term of the contract.</p> <p>If insurance expires during the term of the contract, the member must receive a new certificate of insurance at least 10 days prior to the expiration date.</p> <p>This new insurance must meet the terms of the original contract.</p>	The contractor must have continuous insurance coverage throughout the contract period. Including this in the member’s insurance requirements places the responsibility of providing a new certificate of insurance with the contractor and prevents the contractor from claiming that he or she thought the only requirement was to have insurance at the time of contract bidding.

Recommendation	Why Is This Important?
<p>The contractor must provide a minimum of 30 days advance notice to the member of any substantial change to or cancellation of any insurance policies listed on the certificate.</p> <p>A 60-day notice is preferable.</p>	<p>The Notice of Cancellation section of the certificate of insurance states the insurance companies will provide notice in accordance with the policy provisions before the cancellation.</p> <p>As the cancellation provisions vary for each insurance company, this clause places the responsibility for notification on the contractor, rather than the individual insurance companies.</p>
<p>The contractor is responsible for any deductible or self-insured retention contained within his or her insurance program.</p>	<p>A deductible or self-insured retention is an uninsured portion of the cost of a claim. Including this in the member's insurance requirements confirms the contractor's responsibility for this uninsured liability.</p>
<p>If the contractor fails to keep the specified insurance coverage in effect at all times, the member may, in addition to any other remedies it may have, terminate the contract upon the occurrence of such an event, subject to the provisions of the contract.</p>	<p>Including this in the member's insurance requirements serves notice to the contractor about the importance of maintaining the required insurance throughout the life of the contract and that the member will terminate the contract if the required insurance is not maintained.</p>

## Hold Harmless and Indemnification Agreement

An important part of the risk management process is placing the responsibility for negligent actions with the negligent party. Agreements with contractors usually include statements confirming that they accept responsibility for their negligent acts by agreeing to *defend and hold the member harmless* in the event of a claim.

The hold harmless and indemnification clause can protect the member from costs and damages arising out of the negligent acts of the contractor. It should survive the termination of the agreement.

Although the hold harmless and indemnification clause is likely one of the most important in any contract, it is frequently overlooked and misunderstood. The hold harmless provision transfers liability from one party to another. It is usually coupled with indemnification terminology.

In its simplest form, indemnity means one party to the contract will compensate the other party for any claim costs incurred because of bringing the other party into a claim arising from the first party's negligent actions.

The member can reap substantial benefits by including a favorable hold harmless and indemnification provision in the contract. The independent contractor should defend and hold the member harmless from any claims, suits, costs or damages as a result of the contractor's negligence.

The hold harmless provision can cover any type of expense including but not limited to legal fees, professional fees, judgments and settlements. Legal fees for even a small lawsuit can expend hundreds or thousands of dollars before reaching a settlement.

### Sample Language

Following is sample language that should be modified or tailored to fit each individual situation.

**Sample Language:** The vendor agrees to defend, indemnify and hold (member name), its employees and officials harmless from any claims, demands, actions or causes of action, including reasonable attorney fees and expenses arising

out of any act or omission on the part of the vendor, or its subcontractors, partners or independent contractors or any of their agents or employees in the performance of or with relation to any of the work or services to be performed or furnished by the vendor or the subcontractors, partners, or independent contractors or any of their agents or employees under the agreement.

## Additional Insured Status

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Additional insured status is intended to provide extra protection to the member in the event of a claim. Additional insured refers to a person/organization that is covered by the insurance policy of another person/organization. This status is provided by an endorsement or written amendment to the contractor's policy.

Like primary coverage, additional insured coverage typically provides both defense and indemnity to the additional insured. Rules may differ from policy to policy, but most insurance companies offer an additional insured endorsement.

Some insurance companies charge the contractor a fee for issuing an additional insured endorsement. Therefore, it is important that the contractor is aware of this requirement to build the expense into his or her estimate or bid.

Regardless of whether the member is eventually found to be responsible or even partially responsible for a third-party liability claim resulting from the contract or project, the member will likely be involved in a costly and time-consuming process. Therefore, MCIT recommends that members request additional insured status with respect to the contractor's comprehensive general liability, auto and excess/umbrella policies.

Members should obtain a copy of the additional insured endorsement from the contractor's policy.

Additional insured status is typically not granted under workers' compensation or professional liability policies.

## Certificate of Insurance

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In the hold harmless and indemnification clause, the contractor agrees to protect, defend and indemnify the member from any claims, costs, expenses, etc. arising out of his or her negligent acts. The insurance requirements in the contract assure the member that the contractor has the financial means to meet this obligation by agreeing to keep in place adequate insurance coverage with appropriate liability limits.

A certificate of insurance provides written verification of the coverage and liability limits that the contractor has purchased. The contractor should be required to include a certificate of insurance with his or her bid. This allows the member to verify that the contractor's coverage complies with the requirements in the RFP before awarding the contract.

The importance of obtaining, reviewing and managing certificates of insurance cannot be overemphasized.

## Special Insurance Requirements

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Various contracted services may expose the member to additional risks for which other coverage may be necessary. The following are examples of special coverage requirements and are not intended to be all inclusive.

### Pollution Liability

Pollution liability risks are apparent if the member's project involves asbestos, lead or mold abatement. However, other potential pollution liability exposures arising from the contractor's negligence may not be so apparent. Examples:

- A contractor accidentally allows carbon monoxide to escape from a heating, ventilating or air conditioning system, causing illness and dizziness among visitors and employees.
- A fuel line on a contractor's air compressor suddenly ruptures, discharging fluid that damages the member's recently resurfaced parking lot.

- The contractor’s cleaning compound is inadvertently dumped down the drain, causing fumes that make visitors and employees sick.
- A lawn maintenance contractor disposes of herbicides in an abandoned well, resulting in ground water contamination.
- A service person ruptures a chemical hose, resulting in extensive premises damage.

If the member determines that the contractor is to provide protection for pollution liability claims, consider including language in the insurance requirements such as the following.

**Sample language:** Contractor shall maintain pollution liability covering the contractor’s liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs incurred, all arising out of the work or services to be performed under this contract. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials.

Recommended minimum limits of liability should be:

- \$3 million per occurrence
- \$6 million annual aggregate

The policy must include the member, its officers, agents and employees as additional insureds.

## Builder’s Risk/Installation Floater

Builder’s risk/installation floater (for construction projects) should be purchased for new construction, additions and/or alterations to existing buildings. The contract should specify which party is responsible for placing and purchasing the coverage. It may be the owner (member), the construction manager or the independent contractor.

If the decision is to place that responsibility with the independent contractor, the member should consider including language similar to the following in the insurance requirements.

**Sample language:** During the term of this contract, contractor shall maintain in force, at its own expense, builder’s risk insurance/installation floater covering labor, materials and equipment to be used for completion of the work performed under this contract against all risks of direct physical loss for an amount equal to the full amount of the contract improvements.

For more information about builder’s risk coverage, see the MCIT Resource “Builder’s Risk Coverage.”

## Other Special Coverages

**Fidelity bond/crime insurance:** The contractor should maintain employee dishonesty and, when applicable, inside/outside money and securities coverages for member-owned property in the care, custody and control of the contractor.

Coverage limits should not be less than the amount scheduled in the contract. The policy should include the member as loss payee.

**Performance/payment bond:** A performance or payment bond might be required by statute. A performance bond provides a financial guarantee that the contractor will perform the work specified in the contract within the timeframe indicated in the contract.

A payment bond provides a financial guarantee that the contractor will pay all costs incurred, thereby avoiding potential liens against the property or project.

# Risk Management Recommendations

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Mitigating risk in contracts is fundamentally a good business practice for members. To manage that risk, MCIT recommends the following.

- Determine acceptable coverage and liability limits:
  - Understand insurance language in contracts, both basic coverage and basic limits.
  - Establish member's standard requirements: Consider each situation individually and establish procedures for making an exception if necessary.
- Insurance requirements:
  - Include insurance requirements in bid specifications so the contractor knows the member's expectations and can build the cost of coverage into the cost of the contract.
  - Member's should incorporate requirements in new contracts and review requirements upon renewal of existing contracts.
- Obtain valid certificates of insurance from independent contractors, vendors and service providers with the bid, with the new or renewed contract and before work commences.
- Obtain a copy of the additional insured endorsement whenever the member is to be an additional insured. Listing the member as additional insured on the certificate of insurance does not change the contractor's policy.
- Review all contracts with legal counsel prior to execution.

## Contract Review Now Prevents Aggravation Later

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Members are continually faced with decisions about contract risks, types of insurance, limits, coverage and evaluation of certificates of insurance. The importance of understanding insurance language in contracts cannot be overstated.

Although it does take time and consideration, members will save time, money and aggravation in dealing with potential disagreements arising out of unclear expectations. To avoid costly and often complicated legal issues, MCIT recommends consulting with legal counsel before entering into any contractual agreement.

Members can contact their MCIT risk management consultant toll free at **1.866.547.6516** to discuss any specific needs or concerns they may have.